

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TRENTON BRATCHETT,

Plaintiff,

v.

Case No. 08-C-880

**ERIC BRAXTON, BRAXTON ENVIRONMENTAL
SERVICES CORP., SERGEANT HIBLER,
CAPTAIN MCPHIE, GRADY DAVIS,
SOCIAL WORKER MISS STONE,
NURSE CHERYL RUEHS, ST. JOSEPH-
WHEATON FRANCISCAN HEALTH CARE CORP.,
DR. NORMAN BUEBENDORF, DR. MARK MITCHELL,
DR STEVEN M. GRYNIAWIEZ, R.N. EARNEST
COLLEEN, and DR. T. LAWTON,**

Defendants,

ORDER

I previously stayed proceedings in this case so that the parties could attempt to mediate plaintiff's state law medical malpractice claims as required by Wis. Stat. Ch. 655. (Court's Order of September 15, 2010, Doc. # 116 at 1). However, that stay expired along with the 93-day mediation period prescribed by Wis. Stat. § 655.465(7), on October 25, 2010. Further proceedings have been delayed by the ultimately unsuccessful attempts of the Marshals Service to obtain a waiver of service from, or personal service upon, the defendant sued as R.N. Earnest Colleen. After initial efforts to serve that defendant were unavailing (see Unexecuted Summons, Doc. # 67), plaintiff advised that he believed this individual "is actually named Ernest Collins." (Plaintiff's Response as to Ernest Collins, Doc. # 95). However, along with the corrected name, plaintiff provided an incorrect address.

(See id., and returned U.S. Marshal form, Doc. # 100). After the Marshals Service form was returned due to a faulty address, I directed the Marshals Service to make a third attempt to serve this defendant, using the corrected address supplied by plaintiff in his notice of mediation request. (Doc. # 106-1; Court's Order of September 15, 2010, Doc. # 116 at 2). The Marshals Service has now advised that they remain unable to locate this defendant. (Unexecuted Summons, Doc. # 118, at 2). Accordingly, the court will dismiss defendant Earnest Colleen/Ernest Collins pursuant to Federal Rule of Civil Procedure 4(m) unless plaintiff files an explanation within two weeks of the date of this order, showing good cause for the failure to achieve service, and demonstrating that service can be achieved within an appropriate time.

Therefore,

IT IS ORDERED that defendant Earnest Colleen/Ernest Collins will be dismissed from this action without prejudice pursuant to Federal Rule of Civil Procedure 4(m) unless plaintiff files an explanation within **two weeks** of the date of this order, showing good cause for the failure to achieve service, and demonstrating that service can be achieved within an appropriate time.

Dated at Milwaukee, Wisconsin, this 10th day of January, 2011.

/s

LYNN ADELMAN
District Judge